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No. 10 Original

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS;

UNITED STATES OF AMERICA, INTERVENER

MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE

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UNITED STATES OF AMERICA, INTERVENER

MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE

I. PLEADINGS FILED AND PENDING. PETITION FOR AUTHORIZATION TO FILE

On August 13, 1952, the State of Arizona filed its motion for leave to file its bill of complaint. Directly involved are the rights and interests of that State in the Colorado River System. Arizona's motion for leave to file was granted on January 19, 1953.[1] Likewise granted on that date was

[1] 344 U. S. 919 (1953).

the motion of the United States of America to intervene. Since January 19, 1953, the State of California and the other defendants have filed their answer to the bill of complaint; Arizona has replied to defendants' answer and a rejoinder to that reply has been filed by California and the other defendants. Arizona and those defendants have likewise answered the petition to intervene filed by the United States of America.

Presently pending before this Court is the motion of the State of Nevada for leave to intervene. To that motion the State of Arizona has filed its response, as has the State of California and the other named defendants.

Literally hundreds of pages of pleadings have now been filed together with a like number of pages of appendices to those pleadings.

II. BASIC ISSUES

Presented to this Court for resolution are far-reaching fundamental questions relating to the respective rights of the parties litigant in the Colorado River System. From the pleadings the broad scope of the long-standing controversy is manifest.

THE ISSUES PRESENTED BY THE STATE OF ARIZONA

In its bill of complaint the State of Arizona alludes to the controversy among the parties, "as to the interpretation, construction and application of the Colorado River Compact, the Boulder

Canyon Project Act, and the California Limitation Act," defining these three areas of conflict:

> (1) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?
>
> (2) How is beneficial consumptive use [as that term appears in the Colorado River Compact] to be measured?
>
> (3) How are evaporation losses from Lower Basin main stream storage reservoirs to be charged?

Having asserted its claimed rights to the use of water from the stream system in question, the "wrongful", adverse claims of the State of California and the other named defendants; its necessity to have its claimed rights defined and determined, the State of Arizona prays, among other things, that:

> Its title to the annual beneficial consumptive use of 3,800,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact be forever confirmed and quieted * * *

THE ISSUES PRESENTED BY THE STATE OF CALIFORNIA

To Arizona's bill of complaint the State of California and the other named defendants[3] made detailed answer, traversing the claims of Arizona and asserting affirmatively four defenses in which

[2] Arizona's Bill of Complaint.

[3] Hereafter referred to as the State of California or California.

are chronicled not only the historical background of the Colorado River Compact, but also the claimed rights to the use of water asserted by the several entities named defendants.

Transcendent over all other issues presented by the State of California are its contentions originally presented in its answer to the bill of complaint and reiterated in its answer to the petition of the United States of America, that:

> [1] The State of Arizona rejected the Seven-State Colorado River Compact; that the State of Arizona is not a party to the Colorado River Compact; that it is now precluded from urging the interpretations of that document as set forth in its bill of complaint.
>
> [2] The contracts between the United States of America and the named defendants are severally and collectively senior in time and right to any rights which may exist by virtue of contracts between the United States of America and any other parties for the delivery of water from Hoover Dam storage for use in the State of Arizona, subject to minor exceptions.[4]

In addition to the issues presented by and attendant upon the pleadings of California, gen-

[4] The United States of America has contracted for the delivery of water from the storage created by Hoover Dam, subject to specific terms and conditions, as follows: To certain named defendants 5,362,000 acre-feet each year; to the State of Arizona 2,800,000 acre-feet each year; to the State of Nevada 300,000 acre-feet each year.

erally alluded to above, it prays among other things in its response to the petition of the United States, that the rights and interests of defendants as against all parties to this cause, including the United States of America, be adjudged and decreed; for the appointment of a Special Master with authority to take evidence and to report to this Court findings of fact, conclusions of law and recommendations for a decree.

THE ISSUES PRESENTED BY THE UNITED STATES OF AMERICA

As an indispensable party to an adjudication by this Court of the controversy[5] between the State of Arizona and the State of California, the United States of America intervened. By that intervention the National Government seeks to have its rights determined and confirmed; its obligations and responsibilities ascertained and defined.

In connection with the vast Federal projects and developments in the Lower Basin of the Colorado River, the United States of America in its petition asserts rights to the use of the water in the Colorado River which will yield quantities of water sufficient to satisfy the maximum demands of those projects and developments which are described in its petition; it sets forth its international obligations arising from its Treaty with Mexico, its contractual obligations with the States and public corporations, its trusteeship in regard to the rights to the use of water

[5] *Arizona* v. *California*, 298 U. S. 558 (1936).

of the Indians and Indian tribes in the Lower Basin of the Colorado River.

Likewise asserted by the United States of America in its petition are the conflicts among the parties respecting the interpretation of the Colorado River Compact, the laws enacted in regard to it and the contracts entered into in contemplation of it. The United States of America then prays this Honorable Court to adjudge and declare the validity of the treaties, compacts, contracts and related laws; to interpret and construe those documents and to quiet its title to each and every right to the use of water claimed and exercised by it.

As there has been no disposition made of the motion of the State of Nevada for leave to file its petition in intervention, reference to the issues presented by that State will not be reviewed.

III. PRESENT NEED FOR CLARIFICATION OF ISSUES AND ISSUES WHICH SHOULD NOW BE RESOLVED

From the general statement set forth in the paragraphs which precede, the complexities of the litigation and the numerous issues presented are manifest. California in its answer to the petition of the United States of America has briefly outlined in its summary of the controversy the several aspects of the case as if perceives them. That summary does not purport, however, to be conclusive upon any of the parties, nor does it seek to encompass all of the issues.

Evidenced by that summarization is the present pressing need to delineate and to define the issues which are now presented with the end in view of proceeding at the earliest date possible to have this Court bring about a greatly needed resolution of this complex controversy for the benefit of all parties and the Nation as a whole.

Antecedent to any resolution of the many and varied issues in this action must be a determination of the two basic propositions advanced by the State of California. As shown above, California denies that the State of Arizona is a party to the Colorado River Compact. That issue transcends all others and should this Court accept California's position in regard to it, Arizona and all other parties to the cause would necessarily and drastically revise their pleadings and modify their claims. Eliminated by such a determination would be two of the principal questions concerning which the State of Arizona requests an adjudication. Similarly, the acceptance by this Court of California's contentions above set forth that its contracts severally and collectively are senior in time and right to any and all rights which may exist by virtue of contracts between the United States of America and other parties, would materially revise the course of the litigation changing the whole complexion of the position taken by the State of Arizona and the United States of America.

Attendant upon the two questions to which reference has been made are other issues which might well be resolved in advance of trial.

IV. REQUEST FOR PRE-TRIAL CONFERENCE

For these reasons, the United States of America respectfully requests the Court to order a pre-trial conference presided over by a member of this Court with counsel for all parties, for the purpose of securing simplification and clarification of the issues of law with the view of resolving in advance of any reference to the Special Master as has been prayed, those legal issues to which reference has been made, and such others as are susceptible of that disposition; of securing, if possible, agreement among the parties respecting facts concerning which there is no disagreement; considering the possibility of obtaining admissions respecting documentary evidence thus eliminating unnecessary proof, and otherwise to seek means to expedite a determination of the most appropriate course to pursue at this juncture of the proceding.

Respectfully submitted.

HERBERT BROWNELL, JR.
Attorney General.

MAY 1954.

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